



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2017-0566; FRL-9979-48-Region 10]

Air Plan Approval; ID, Crop Residue Burning; Revision to Ozone Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to Idaho's State Implementation Plan (SIP) related to agricultural crop residue burning. The Director of the Idaho Department of Environmental Quality (IDEQ) submitted the revisions to EPA on September 22, 2017. IDEQ supplemented the original submission with photochemical modeling analyses on October 23, 2017. The revisions change the ambient ozone concentration level at which IDEQ may approve a permittee's request to burn. This final action is being taken for the reasons set out in EPA's proposed action in this matter. This action is being taken under section 110 of the Clean Air Act (the Act or CAA).

DATES: This final rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2017-0566. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please

contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Randall Ruddick at (206) 553-1999, or *ruddick.randall@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” is used, it is intended to refer to EPA.

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I. Background

On September 22, 2017, the Idaho Department of Environmental Quality (IDEQ) submitted revisions to the SIP provisions regulating open burning of crop residue in the state to EPA for approval. On January 22, 2018, the EPA proposed to approve all of the revisions requested in the September 22, 2017 submittal. We are taking final action for the reasons explained in the January 22, 2018 notification of proposed approval (83 FR 2955). Please see our proposed approval for further explanation and the basis for our finding. The public comment period for this proposal ended on February 21, 2018. EPA received public comments on the proposed rulemaking. Summaries of the comments as well as EPA’s responses to adverse comments are in Section II of this rulemaking action. After consideration of the comments, we do not believe any changes in the rationale or conclusions in the proposed approval are appropriate.

II. Response to Comments

EPA received comments on a variety of issues related to the proposed approval of Idaho's crop residue burning SIP revisions. Out of a total of ten comments received, three were supportive of EPA's approval of the SIP revisions, four were adverse to the EPA's proposed approval, and three were determined to be not germane to this action. A full copy of all comments received is available in the docket for final action.

Comment:

EPA received public comments arguing that the NAAQS are not adequately protective of public health in the context of crop residue burning and should not be relied upon as the basis for approval of the proposed crop residue burning SIP revisions. One commenter stated that because the PM_{2.5} NAAQS takes the form of a 24-hour average that it allows "spikes" of emissions that are sufficient to "kill citizens, especially children with undeveloped lungs, the elderly, and anyone with underlying heart or lung diseases." Another commenter urged EPA to disapprove the proposed SIP revisions, citing studies that they assert demonstrate negative human health impacts to exposure to ozone at levels below the NAAQS.

Response:

These comments relate to the adequacy of the PM_{2.5} and ozone NAAQS, and are therefore outside of the scope of this action. The CAA contains provisions that specifically address the establishment and review of the NAAQS. To briefly summarize, under sections 108 and 109 of the Act, EPA issues "air quality criteria" and establishes NAAQS for certain air pollutants. CAA section 109(d)(1) requires EPA to periodically review, and if appropriate, revise the air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant

on public health and welfare, and to periodically review, and if appropriate revise, the NAAQS, based on the revised air quality criteria. Section 109(b)(1) defines a primary (health-based) standard as one “the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, [is] requisite to protect the public health.” In setting primary NAAQS that are “requisite” to protect public health, as provided in section 109(b), EPA’s task is to establish standards that are neither more nor less stringent than necessary for these purposes. *See generally Whitman v. American Trucking Associations*, 531 U.S. 457, 465-472, 475-76 (2001).

Pursuant to those provisions, EPA completed its last review of the ozone NAAQS in 2015 (80 FR 65292, October 26, 2015). With respect to the primary standard, in that review EPA determined that the NAAQS should be revised to provide the requisite protection of public health (80 FR 65292, October 26, 2015). Accordingly, based on careful consideration of the extensive information in the record, including a thorough review of scientific evidence and information about ozone-related health effects, quantitative assessments that estimated public health risks associated with just meeting the prior ozone NAAQS and various alternative standards that were considered, advice from EPA’s Clean Air Scientific Advisory Committee (CASAC), and public comments received in response to the proposal, the Administrator revised the level of the primary ozone NAAQS to 0.070 parts per million, and retained the other elements of the prior standard (indicator, form, and averaging time) (80 FR 65365, October 26, 2015). In so doing, she concluded that the revised primary standard is requisite to protect public health, including the health of at-risk populations, with an adequate margin of safety (80 FR 65365, October 26,

2015).¹ EPA provided notice and an opportunity for public comment on the proposal for this action (79 FR 75234, December 17, 2014) and there was an opportunity to file petitions for judicial review pursuant to CAA section 307.

Similarly, EPA completed its last periodic review of the PM NAAQS in 2012, and published notice of its decision to revise the PM NAAQS in 2013 (78 FR 3086, January 15, 2013). With regard to the primary NAAQS for PM_{2.5}, in that review EPA revised the annual PM_{2.5} standard, including by lowering the level to 12.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) so as to provide increased protection against health effects associated with long- and short-term exposures (including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease), and retained the 24-hour PM_{2.5} standard at a level of 35 $\mu\text{g}/\text{m}^3$ (78 FR 3086, January 15, 2013).² The Administrator concluded that with the revisions in that review the suite of standards would be requisite to protect public health with an adequate margin of safety against health effects potentially associated with long- and short-term PM_{2.5} exposures (78 FR 3164, January 15, 2013). EPA provided notice and an opportunity for public comment on the proposal for this action (77 FR 38890, June 29, 2012) and there was an opportunity to file petitions for judicial review pursuant to CAA section 307. Since then, EPA has initiated the next periodic review of the air quality criteria and NAAQS for PM (see 79 FR 71764, December 3, 2014; 81 FR 22977-78, April 19,

¹ A more detailed summary of the considerations in that review, as well as of the issues raised in in public comments and EPA's responses, can be found in the *Federal Register* notification for the final action (80 FR 65365, October 26, 2015), and in the Response to Comments document, which can be found in the docket for that action (Docket No. EPA-HQ-OAR-2008-0699).

² A more detailed summary of the considerations in that review, as well as of the issues raised in in public comments and EPA's responses, can be found in the *Federal Register* notification for the final action (78 FR 3086, January 15, 2013), and in the Response to Comments document, which can be found in the docket for that action (Docket No. EPA-HQ-OAR-2007-0492).

2016).

These actions revising the primary NAAQS for PM and ozone, and the related conclusions that the 2012 PM NAAQS and 2015 ozone NAAQS are requisite to protect the public health with an adequate margin of safety, are beyond the scope of this action. This action concerns a SIP submission under CAA section 110, and under section 110(a) such plans are to “provide[] for implementation, maintenance, and enforcement” of the primary NAAQS. EPA does not revisit the adequacy of the NAAQS when taking action on proposed SIP modifications related to that pollutant. Rather, EPA reasonably focuses on a determination of whether a SIP amendment will ensure attainment and maintenance with the NAAQS as the relevant and applicable standard for approvals of SIP revisions under CAA section 110.

In the matter at hand, Idaho requested a revision to the ozone concentration level at which IDEQ may authorize (authorization level) agricultural crop residue burning (CRB). The requested revision does not change the authorization levels for any other NAAQS and all other CRB requirements remain unchanged. For the reasons provided in our proposal for this action, we conclude that approval of Idaho’s submitted SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Clean Air Act. 83 FR 2955, January 22, 2018.

Comment:

Several commenters expressed concern about Idaho’s failure to evaluate how an increase in ozone emissions from crop residue burning would interact with other pollutants to impact public health. The commenters argued that Idaho has a duty to demonstrate that its proposed SIP revisions will not increase risks to public health. Several commenters objected to the SIP

revision on the basis that the changes are not in the public interest and constitutes a weakening of a health-based standard. Commenters cited both impacts to public health associated with crop residue burning from both ozone and fine particles (PM_{2.5}). One commenter asserted that Idaho did not consider the cumulative public health impacts of frequent or multiple exposures to PM from sources including both CRB and wildfires. They argue that Idaho did not adequately consider other pollutants (such as PM or CO) described as “by-products” of biomass burning, and more specifically did not consider the combined effects of PM_{2.5}, CO and ozone, as well as toxics such as “benzene, PAH’s [sic] and others” that are in the air as a result of either CRB or from wildfires. One commenter argued that in the absence of “conclusive studies of the effects of breathing all these substances at once, ... maintaining the 75% of all NAAQS is the only proven way” to protect public health. The Idaho Conservation League (ICL) argued that Idaho’s SIP submission “failed to provide sufficient justification that remaining CAA requirements would not be violated” and specifically cited section 101 of the Clean Air Act (42 U.S.C. 7401(b)(1)) to support its assertion.

Response:

As explained in EPA’s notice of proposed rulemaking in this matter, whether or not a SIP revision will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA is the relevant basis for approval or disapproval. SIPs, under CAA section 110, implement the NAAQS contained in CAA section 109 which are specific to the six criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. Hazardous air pollutants (HAPs) such as benzene and PAHs, in general, are not regulated under Title I of the CAA and are not

relevant to EPA determinations of whether or not a SIP revision meets the relevant requirements of the Act. Contrary to the arguments raised by these commenters, EPA does not have authority under the CAA to consider whether a proposed SIP revision will result in a general increased risk to public health (whether it be from one pollutant considered in isolation or the synergistic effects of human exposure to multiple pollutants interacting with one another) so long as the state can demonstrate that the SIP will result in the attainment or maintenance of the relevant NAAQS.

ICL cites CAA section 101(b)(1) in support of its assertion that Idaho's SIP submission does not meet the requirements of the CAA, and that Idaho had not provided a sufficient justification that CAA requirements not related to the ozone NAAQS would not be violated. CAA section 101(b)(1) provides a declaration of one of the purposes of Title I of the Act, namely "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." EPA disagrees with the commenter's assertion that CAA section 101(b)(1) authorizes EPA to disapprove a SIP revision based on the cumulative impacts of pollutants in evaluating a state's implementation plan under Title I.

Comment:

One commenter disputed Idaho's assertion that raising the burn authorization trigger from 75% to 90% of the ozone NAAQS will facilitate authorizing burning on days when the conditions for pollutant dispersion are better. Multiple commenters asserted that Idaho did not consider alternative options to crop residue burning, including the option of simply not authorizing burns on days when the NAAQS will exceed the current 75% burning authorization

level (e.g., making no changes to the current SIP-approved rules). The commenters cited the current 75% of the NAAQS SIP limit to be the product of a compromise of interests, and one that anticipated that monitored averages would not be an adequate gauge of actual PM_{2.5} or other criteria pollutant exposure, and thus provided a margin of safety to public health that the proposed SIP revision would eliminate. One commenter stated that the ozone monitoring network in Idaho could be “more robust.”

Response:

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Failure to consider alternatives to the proposed SIP revision is not a basis for disapproval. Even if the existing SIP burning threshold was originally established as a consensus-based standard at the state level taking into account the factors identified by the commenters, EPA cannot substitute its judgement or policy preferences for Idaho’s lawfully submitted SIP revision so long as the SIP revision is consistent with the CAA’s requirements. As explained in EPA’s notice of proposed rulemaking, EPA concludes that Idaho has adequately demonstrated that the SIP revision will not interfere with continued attainment of the ozone NAAQS in Idaho. Potential effects of the revision on attainment and maintenance is limited to the ozone NAAQS because the SIP submission does not alter any requirements related to other criteria pollutants. Under such circumstances, nothing in the CAA prohibits a state from modifying its SIP requirements to address its current air quality management needs.

As explained in EPA’s notification of proposed approval, EPA concludes that Idaho has adequately demonstrated that it will continue to attain the ozone NAAQS after raising its ozone burning threshold. To the extent that the commenter is raising concerns about the adequacy of

the Idaho ozone monitoring network to detect ozone NAAQS violations, it is relevant to note that EPA regularly assesses the adequacy of states' monitoring networks for all pollutants pursuant to its review of each state's Annual Network Monitoring Plan. EPA's most recent evaluation of the Idaho ozone monitoring network was addressed in its November 8, 2017, approval letter (included in the docket for this action). EPA's approval letter identified areas where an ozone monitor may need to be added in the future. EPA will continue to monitor the adequacy of the ozone monitoring network to determine if the network must be expanded to comply with 40 CFR part 58 requirements.

III. Final Action

EPA is approving, and incorporating by reference where appropriate in Idaho's SIP, all revisions requested by Idaho on September 22, 2017 to the following provisions:

- IDAPA 58.01.01.621.01 (Burn Approval Criteria, state effective February 28, 2018); and
- Idaho Code 39-114 (Open Burning of Crop Residue, state effective February 28, 2018).

We have determined that the submitted SIP revisions are consistent with section 110 and part C of Title I of the CAA.

IV. Incorporation by Reference

In this rule, EPA is approving regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are incorporating by reference the provisions described above in Section III. Final Action and set forth below, as amendments to 40 CFR part 52. EPA has made, and will continue to make, these documents generally available electronically through <https://www.regulations.gov> and at the EPA Region 10 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for

more information).

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5

U.S.C. 804(2).

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 7, 2018.

Chris Hladick,
Regional Administrator,
EPA Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N - Idaho

2. Section 52.670 is amended by:

a. In paragraph (c), under table entitled “EPA-Approved Idaho Regulations and Statutes”:

i. Revising entry “621”;

ii. Removing entry “Section 1 of House bill 557, codified at Idaho Code Section 39-114”;

and

iii. Adding an entry at the end of the table.

b. In paragraph (e), under the table entitled “EPA-Approved Idaho Nonregulatory Provisions and Quasi-Regulatory Measures”, adding an entry at the end of the table.

The revision and additions read as follows:

§ 52.670 Identification of plan.

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(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				

* * * * *				
621	Burn Determination	2/28/2018, 4/2/2008	[Insert date of publication in the Federal Register], [Insert Federal Register citation]; 8/1/2008, 73 FR 44915	
* * * * *				
State Statutes				
Section 3 of Senate Bill 1009, codified at Idaho Code Section 39- 114	Open Burning of Crop Residue	2/28/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

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(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI- REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *				
Open Burning of Crop Residue State Implementation Plan Revisions	State-wide	9/22/2017, 10/23/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Original submission and supplemental modeling analyses

[FR Doc. 2018-13046 Filed: 6/18/2018 8:45 am; Publication Date: 6/19/2018]